

Action

OLL 85-2783

Office of Legislative Liaison

Routing Slip

| TO: | ACTION | INFO |
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SUSPENSE

30 Sept85

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| Action Officer: | |
| Remarks: | <i>Action completed / NO COMMENT 9/27/85</i> |

24 Sept85

Name/Date

File: Crimes / Criminal Case



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

WASHINGTON, D.C. 20503

September 20, 1985

LEGISLATIVE REFERRAL MEMORANDUM

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| LEGISLATIVE LIAISON |
| 85-2783 |

TO:

Department of State
Department of Defense
Central Intelligence Agency
Department of the Treasury
National Security Council

SUBJECT: Department of Justice proposed report on S. 1508, a bill to provide for the death penalty for persons who commit first degree murder while committing the offense of hostage taking in violation of 18 USC 1203(a).

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than September 30, 1985.

Direct your questions to Gregory Jones (395-3454), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Karen Wilson
Adrian Curtis



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 1508, a bill to provide for the death penalty for persons who commit first degree murder while committing the offense of hostage taking in violation of 18 U.S.C. 1203(a). The Department firmly believes that the death penalty is justified for this offense, but we would prefer to see such punishment established as part of a broader bill providing for capital punishment for first degree murder generally and for other heinous crimes of unique national importance such as Presidential assassination and espionage involving critical defense information.

As you are aware from our reports on other death penalty bills such as S. 1191, S. 1280, and S. 1490, we do not support a piecemeal approach of enacting constitutional procedures for the imposition of the death penalty for just one or two offenses.^{1/} Rather, we favor the approach taken by S. 239, which you introduced, that would provide for such procedures for virtually all cases in which the death penalty would be appropriate. In this connection, our review of S. 1508 has demonstrated that S. 239 should be amended slightly to provide in essence that the penalty

^{1/} As the Committee is aware, and as reflected in its report on S. 1765 in the 98th Congress (S. Rep. No. 98-251, 98th Cong., 1st Sess. (1983)), capital punishment for certain especially heinous crimes is not unconstitutional, but legislation should be enacted to establish procedures and criteria for the federal system which clearly guard against the unfettered exercise of discretion which the Supreme Court condemned in Furman v. Georgia, 408 U.S. 232 (1972).

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of death is authorized for anyone who kills another person while engaged in the crime of hostage taking in violation of 18 U.S.C. 1203(a). We would suggest that the proposed 18 U.S.C. 3592(c)(1) in S. 239 -- which lists aggravating factors for murder -- be amended by adding a reference to section 1203 so that in context it would allow the court or jury at the sentencing hearing to consider whether the death occurred during the commission or flight from commission of an "offense under ... section 1203 (hostage taking)". Moreover, a new section 11 should be added to S. 239 stating that subsection 1203(a) of title 18 is amended so that it concludes: "shall be punished by imprisonment for any term of years or for life, and if the death of any person results, shall be punished by death or by life imprisonment."

As for S. 1508, the bill sets out procedures for imposing the death penalty taken directly from S. 239. These procedures would, in our view, pass constitutional muster. However, like S. 239, S. 1508 -- in its proposed 18 U.S.C. 2321A(a)(1)(D) -- would allow the jury at the sentencing hearing to find the existence of a particular aggravating or mitigating factor by only a simple majority vote provided the jury found by a unanimous vote that some aggravating or mitigating factor was present. We remain of the view, which we have espoused in the 98th Congress and in our comments on other death penalty bills in the present Congress, that as a policy matter it is preferable that unanimity be required as to the presence of each aggravating factor and the absence of each mitigating factor relied on by the jury in determining whether to impose the death penalty. Accordingly, if the Committee decides to consider S. 1508 either instead of or in addition to S. 239, we would suggest that this portion of the bill be modified slightly.

In addition, we would note the following technical matters with regard to S. 1508: First, for purposes of consistency in drafting, the parenthetical "c" at line 9, page 6, should be capitalized. For the same reason, the word "subsection" in line 22, page 4, line 23, page 8, and line 3, page 9, should be replaced with the word "subparagraph" in each instance. The phrase "or if there is no jury" is erroneously repeated twice in line 21, page 7. Finally, the phrase "if the maximum term of imprisonment for the offense is life imprisonment" at lines 14-15 on page 9 is unnecessary in a death penalty provision limited only to the offense of hostage taking which does, by its very terms, provide for life imprisonment.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney General